

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**P.B., Appellant**

**and**

**U.S. POSTAL SERVICE, GWYNN OAK POST  
OFFICE, Baltimore, MD, Employer**

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**Docket No. 20-1643  
Issued: March 30, 2022**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On September 15, 2020 appellant filed a timely appeal from an August 25, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met her burden of proof to establish a right upper extremity condition causally related to the accepted May 2, 2020 employment incident.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the August 25, 2020 decision, OWCP received additional evidence. The Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

### **FACTUAL HISTORY**

On May 9, 2020 appellant, then a 62-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on May 2, 2020 she sustained an open dislocation of the right elbow while in the performance of duty. She stopped work on that date and returned to full-duty work on August 2, 2020.

Hospital records, dated May 2, 2020, indicate that appellant was diagnosed with open posterior dislocation of the right elbow after being seen by a care team consisting of Dr. Sam V. Sydney, an orthopedic surgeon, Dr. Hilary F. Schmitt, an emergency medicine specialist, and Robert A. Loya, a physician assistant. Appellant was provided wound care, prescribed medication, and scheduled for a follow-up appointment with orthopedics on May 13, 2020.

In a note dated May 13, 2020, Aaron Shakespeare, a physician assistant, recommended that appellant remain off work for three months. In a duty status report (Form CA-17) of even date, he diagnosed a right elbow fracture and dislocation due to being ejected from a truck on May 2, 2020.

In a July 9, 2020 development letter, OWCP informed appellant that the evidence submitted was insufficient to establish her claim. It advised her of the type of factual and medical evidence necessary and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In a July 31, 2020 response to OWCP's development questionnaire, appellant indicated that she was delivering mail to a mounted mailbox when the end of her sleeve became caught in the mailbox. She related that she did not realize she was stuck until she was pulling away from the box, and then she unbuckled her seatbelt and fell to the ground.

In a June 30, 2020 attending physician's report (Form CA-20), Dr. Sydney noted a date of injury of May 2, 2020 and a diagnosis of recurrent dislocation of the right elbow and a displaced fracture of the right humerus. He indicated that appellant was hospitalized for this condition May 2 through 3, 2020 and, during that time, underwent a closed reduction of the right elbow. Dr. Sydney checked a box marked "No" indicating that her condition was not caused or aggravated by an employment activity.

By decision dated August 25, 2020, OWCP accepted that the May 2, 2020 employment incident occurred as alleged. However, it denied the claim, finding that the medical evidence of record was insufficient to establish that the diagnosed right elbow condition was causally related to the accepted employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time

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<sup>3</sup> *Supra* note 1.

limitation of FECA,<sup>4</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.<sup>7</sup>

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment factors identified by the employee.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has met her burden of proof to establish an open posterior dislocation of the right elbow causally related to the accepted May 2, 2020 employment incident.

Hospital records, dated May 2, 2020, indicate that appellant was diagnosed with open posterior dislocation of the right elbow after being seen by a care team consisting of Dr. Sydney, Dr. Schmitt, and Mr. Loya. The records further indicate that she was provided wound care.

As the evidence of record establishes that appellant's employment incident resulted in a visible injury, the Board finds that she has met her burden of proof to establish an open dislocation

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<sup>4</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

of the right elbow causally related to the accepted May 2, 2020 employment incident.<sup>10</sup> The case will, therefore, be remanded for payment of medical expenses for appellant's diagnosed open dislocation of the right elbow, to be followed by a *de novo* decision regarding any attendant disability.

### **CONCLUSION**

The Board finds that appellant has established an open posterior dislocation of the right elbow causally related to the accepted May 2, 2020 employment incident.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the August 25, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: March 30, 2022  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>10</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.6(a) (June 2011); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(c) (January 2013). See also *A.J.*, Docket No. 20-0484 (issued September 2, 2020); *S.K.*, Docket No. 18-1411 (issued July 22, 2020).